

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.01.2021

PRONOUNCED ON : 11.02.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD)Nos. 1980, 1981 & 2011 of 2013
and M.P.Nos.1,1,1,2,2 & 2 of 2013

Bank of India,
Rep. by the Manager,
At Express Towers,
Nariman Point, Mumbai,
Branch office at
SB Towers, Door No.262,
Pollachi Main Road,
Sundarapuram,
Coimbatore.

... Petitioner in
all CRPs

Vs.

S.Bupathi

... Respondent in
all CRPs

Common Prayer in C.R.P.Nos.1980 & 1981 of 2013:- Civil Revision

Petitions are filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 30.04.2013 passed in I.A.Nos.1322 & 1323 of 2013 in O.S.No.1439 of 2013 respectively, on the file of the District Munsif Court, Coimbatore.

Prayer in C.R.P.No.2011 of 2013:- Civil Revision Petitions are filed under Article 227 of the Constitution of India to strike down the plaint in O.S.No.1439 of 2013 on the file of the District Munsif Court, Coimbatore.

For Petitioner
in all CRPs : Mr.F.B.Benjamin George

For Respondent
in all CRPs : Ms.R.Shase

COMMON ORDER

The Civil Revision Petitions in C.R.P.Nos.1980 & 1981 of 2013 are directed as against the fair and decreetal order dated 30.04.2013 passed by the learned District Munsif, Coimbatore in I.A.Nos.1322 & 1323 of 2013 in O.S.No.1439 of 2013 respectively, thereby granting an exparte interim injunction in the petitions filed by the respondent/plaintiff.

2. The Civil Revision Petition in C.R.P.No.2011 of 2013 has been filed to strike down the plaint in O.S.No.1439 of 2013 on the file of the District Munsif Court, Coimbatore.

3. In all the Civil Revision Petitions, the petitioner is the defendant in the suit filed by the respondent for permanent injunction. The respondent/plaintiff filed a suit for the following reliefs:-

"a) restraining the defendant, their men, officials, servants and workers from in any manner posting any security personnel or servants in the main entrance of the suit property and they preventing the plaintiff and other occupants and tenants of the suit property from being possessed and enjoyed in any manner whatsoever, by a decree of permanent injunction;

b) restraining the defendant, their men, official and the persons claiming through the defendant from in any manner parking the vehicles inside the suit property by a decree of permanent injunction;

c) directing the defendant to pay the cost of the suit

AND

d) granting such other and further relief as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice."

4. On the date of moving the suit, the Court below granted ad-interim injunction in I.A.Nos. 1322 & 1323 of 2013 in O.S.No.1439 of 2013

and also ordered notice to the petitioner by an order dated 30.04.2013. Aggrieved by the exparte interim injunction granted in both applications, the petitioner preferred the Civil Revision Petition in C.R.P.No.1980 & 1981 of 2013 respectively. The petitioner filed another revision petition in C.R.P.No.2011 of 2013 to strike down the plaint in O.S.No.1439 of 2013 on the file of the District Munsif Court, Coimbatore.

5. The learned counsel appearing for the petitioner submitted that the respondent availed loan from the petitioner bank for construction of commercial complex by mortgaging the subject property. Thereafter, other two companies managed by the respondent availed loan by mortgaging the very same property from the petitioner. In total, the respondent availed loan to the tune of Rs.4.01 crores from the petitioner. On 25.11.1998, the petitioner had taken out a portion of the premises in the subject property for lease by the lease deed dated 25.11.1998. Thereafter the respondent and other companies managed by him defaulted in repaying the loan amount and as such they become non performing assets and the petitioner initiated proceedings under the SARFAESI Act by issuing demand notice under

Section 13(2) of the SARFAESI Act thereby demanded to repay the total sum of Rs.7,63,73,770.67. Thereafter, the respondent failed to pay the said amount and the petitioner bank had taken symbolic possession in respect of the subject property on 07.01.2004. In fact the petitioner also obtained order from the District Munsif Court, Coimbatore to take physical possession of the subject property under Section 14 of SARFAESI Act.

5.1. While pending the suit proceedings, the family members of the respondent herein filed partition suits in O.S.No.224 of 2004 and 417 of 2007 and both are pending. Further those suits are nothing to do with the present suit. The respondent also sold out some security assets and released the part of the amount. At that juncture, the respondent prevented the customers of the petitioner bank from entering into the premises and also disconnected the water connection to the premises leased out to the petitioner. Therefore, the petitioner lodged complaint before the jurisdictional police station on 16.03.2013. The respondent also filed counter complaint with false allegations on 02.04.2013. Thereafter, the respondent filed the present suit in O.S.No.1439 of 2013 for injunction

restraining the petitioner from posting a security personnel and also restraining the customers and officers from parking their vehicles in the subject property. The Court below granted ex parte interim injunction as prayer for. The said suit itself abuse of process of law and under section 34 of the SARFAESI Act no jurisdiction to the civil Court to entertain the civil suit and as such it is not maintainable. There is no cause of action to file the impugent suit and it is liable to be strike of.

5.2. He also submitted that provisions under Section 34 of the SARFAESI Act restrains the civil Court from granting any sort of injunction against the secured creditors against any measures and proposed measures under the SARFAESI Act. In fact, it is the responsibility of the secured creditors to protect the assets and taking possession of the same. Therefore, there cannot be any restriction on the petitioner from engaging security personnel to safeguard the currency chest of the RBI and the safety vaults of the petitioner wherein huge money of the bank and valuable of the customers are kept under risk. Therefore the suit itself frivolous, vexatious and barred by law. This Court has got supervisory jurisdiction under Article

227 of Constitution of India and can be strike out the plaint. In support of his contention, he relied upon the following reported judgments:-

i. 2013(6) CTC 809 - N.A.Chinnasamy and anr Vs.

S.Vellingirinathan

ii. 2018 SCC Online SC 3268 - Sree Annadhakumar Mills Ltd

Vs. Indian Overseas Bank & ors.

iii. (2019) 13 SCC 497 - ICICI Bank Ltd., & ors Vs. Umakanta

Mohapatra and ors.

iv. 2011(3) CTC 801 - V.Thulasi Vs. Indian Overseas Bank.

6. Per contra, the learned counsel appearing for the respondent would submit that the suit property ad measuring 68 cents comprised in S.F.No.110 situated at Kurichi Village belongs to the respondent herein. He had put up commercial complex in the name and style of SP towers. A portion of the ground floor of the said property has been leased out to the petitioner herein for non residential purpose, in which the petitioner is running its branch office. There are more than 30 tenants in the complex and each of them occupied their leased out portion. There are 14 residence are there and they are occupied for the purpose of residence. The petitioner paid advance of Rs.1,22,010/- and monthly rent was fixed at 20,335/-. The

entire commercial complex is secured by security persons engaged by the respondent and all the occupants have to pay for the security charges to the respondent, in which the petitioner is due of amount payable for the security. Like wise, the petitioner also due in payment towards generator set for providing electricity during electricity power cut. The petitioner also failed to pay the parking charges, water consumption charges and maintenance charges as per the lease agreement. Therefore, the respondent caused notice dated 24.10.2012 to call upon the petitioner to pay all the charges due to the respondent herein.

6.1. She further submitted that admittedly there is a default in payment of loan availed by the respondent herein and he is facing the proceedings under the SARFAESI Act. In fact the respondent filed appeal before the debt recovery tribunal and it is pending. Under the SARFAESI Act proceedings, the petitioner had taken symbolic possession of the subject property and has engaged security personnel in the main entrance of the complex and prevented the other tenants and occupants of the complex from entering into their respective shop and also prevented the enjoyment of the

other occupants. Further she submitted that the petitioner also prevented other occupants to park their car in the subject property and also allowed their customers and staff to park their vehicle in the entire subject property. Therefore, the respondent was constrained to file the suit with the above said relief.

6.2. All the allegations are nothing to do with the proceedings initiated under the SARFAESI Act by the petitioner against the respondent. Therefore, the present suit is very much maintainable before the civil Court since this suit is nothing to do with the SARFAESI Act proceedings. The respondent did not challenge any of the proceedings initiated by the petitioner under the SARFAESI Act proceedings in the present suit. She further submitted that when there is an alternative remedy under Order VII Rule 11 of C.P.C., for rejection of plaint, without availing the same, the petitioner directly approached this Court under Article 227 of Constitution of India, which is not permissible. In support of her contention, she relied upon the judgment reported in (2019) 9 SCC 538 in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society*** and prayed for dismissal of all the petitions.

7. Heard Mr.F.B.Benjamin George, learned counsel appearing for the petitioner and Ms. R.Shase, learned counsel appearing for the respondent.

8. The petitioner is the tenant under the respondent in a portion of ground floor of the subject property. The petitioner is having its branch office in the subject property. There are so many tenants occupied the shop portions and also residential portions. The respondent availed loan and defaulted in repayment of the said load. Therefore, the petitioner initiated proceedings under the SARFAESI Act and had taken symbolic possession of the subject property. Some of the proceeding also challenged by the respondent before the Debt Recovery Tribunal, Coimbatore and it is pending.

9. In pursuant to the proceedings under SARFAESI Act, the petitioner engaged security personnel for the subject property. According to the respondent, the engagement of the security personal would cause ingress and egress to other occupier of the subject property and they are being

curtailed and prevented to enter into their respective portions. On perusal of the plaint revealed that security personnel can be posted only at the entrance of the petitioner bank viz, lease hold premises and the petitioner cannot engage security personnel for the entire premises, interfering others enjoyment of the subject property. The prayer sought for in the present suit as extracted above, it is clear that the suit for permanent injunction, restraining the petitioner from engaging security personnel in the main entrance of the subject property. In respect of the second prayer is concerned restraining the petitioner and their men from parking their vehicles inside the subject property.

10. The learned counsel appearing for the petitioner would submit that even in the partition suits in respect of the subject property, under the SARFAESI Act, it cannot be entertained by the Civil Court and the present suit is nothing but to curtail the petitioner bank from taking appropriate action under the SARFAESI Act. There is clear bar under Section 34 of the SARFAESI Act to order interim injunction by the Civil Court.

11. In this regard, the learned counsel appearing for the petitioner relied upon the judgment reported in **(2014) 1 SCC 479** in the case of **Jagdish Singh Vs. Heerlaland and ors**, in which our Hon'ble Supreme Court of India held as follows :-

"19. The expression 'any person' used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13(4) of the Securitisation Act. Reference may be made to the Judgment of this Court in Satyavati Tondon's case (supra).

20. Therefore, the expression 'any person' referred to in Section 17 would take in the plaintiffs in the suit as well. Therefore, irrespective of the question whether the civil suit is maintainable or not, under the Securitisation Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the Securitisation Act, in case the bank (secured creditor) adopt any measure including the sale of the secured assets, on which the plaintiffs claim interest.

21. Section 34 of the Securitisation Act

ousts the civil court jurisdiction. For easy reference, we may extract Section 34 of the Securitisation Act, which is as follow:

“34. Civil Court not to have jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

22. The scope of Section 34 came up for consideration before this Court in Mardia Chemicals Ltd. (supra) and this court held as follow:

“50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery

Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub- section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken “or to be taken in pursuance of any power conferred under this Act”. That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no

jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.”

23. Section 13, as already indicated, deals with the enforcement of the security interest without the intervention of the court or tribunal but in accordance with the provisions of the Securitisation Act.

24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the “measures” referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The

opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding “in respect of any matter” which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression ‘in respect of any matter’ referred to in Section 34 would take in the “measures” provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any “measures” taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well."

12. He also relied upon the judgment reported in **2011 (3) CTC**

801 in the case of ***V.Thulasi Vs. Indian Overseas Bank***, in which this Court held as follows :-

"29. By clever and astute drafting, the plaintiff might create an illusion of cause of action by trying to bring civil suit within the parameters laid down by the Supreme Court in *Mardia Chemicals case*, (2004) 4 SCC 311. Pointing that Court has duty to see if such allegations of fraud are thrown just for the purpose of maintaining a suit, in *PUNJAB NATIONAL BANK VS. J.SAMSATH BEEVI*, ((2010(3) CTC 310)), Justice V.Ramasubramanian held as under:

"8. But at the same time, the Court has a duty to see, if such allegations of fraud are thrown, just for the purpose of maintaining a suit and ousting the jurisdiction of the Tribunal and to keep the Banks and Financial Institutions at bay. If by clever drafting, the plaintiff creates an illusion of a cause of action, the Court is duty bound to nip it in the bud. To find out if it is just a case of clever drafting, the Court has to read the plaint, not formally, but in a meaningful manner. So is the dictum of the Apex Court in

T.Arivandandam vs. T.V.Satyapal [1977 (4) SCC 467]. It was again reiterated by the Court in I.T.C. Ltd vs. Debts Recovery Appellate Tribunal [1998 (2) SCC 70], by holding that clever drafting, creating illusions of cause of action are not permitted in law. The ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order VII, Rule 11(a).

9. A Court is obliged to see if the allegations of fraud and collusion made in the plaint, are themselves a product of "fraud and collusion" between the family members of the borrowers, so as to escape liability and save the secured assets, somehow or the other. In the recent past, there is a sudden spurt in the number of civil cases filed against the actions initiated by Banks and Financial Institutions, either under the 1993 Act or under the SARFAESI Act, 2002. All these cases fall under 3 or 4 categories viz.,
(i) cases filed by strangers claiming that their properties are brought to sale on the basis of forged documents or certified copies of documents

submitted by borrowers to Banks

(ii) cases filed by guarantors claiming that they never signed letters of guarantee or offered their properties as securities

(iii) cases filed by close relatives of borrowers such as spouses, children, brothers and sisters, claiming that they have a share in the properties mortgaged by the borrowers and that they were never aware of and they never gave consent to the properties being offered as securities and

(iv) cases filed by third parties claiming that the properties were sold to them by the borrowers or guarantors by suppressing the creation of the mortgage and that they are bona fide purchasers for value without notice of the encumbrances.

10. It is not very difficult for a seasoned litigant or an intelligent lawyer to draft the Complaint in such a manner as to make a secured asset, come within anyone of the above 4 categories, by a clever drafting of the Complaint, thereby creating an illusion of fraud, collusion, misrepresentation and the like. Today, with the advancement of technology, the creation of an illusion and the creation of a virtual world are both possible. The

moment the Civil Suit is taken on file, the proceedings before the Debts Recovery Tribunal or under the SARFAESI Act, 2002 gets slowed down. This results in two consequences viz., (i) out of frustration, the Banks agree for one time settlements, or (ii) third party rights get created by taking advantage of the situation. Therefore, the Courts have a greater responsibility to scan the pleadings and see if the allegations of fraud and collusion made in the Plaint are actually a product of fraud and collusion between the borrowers and those making such claims."

We fully endorse the above views of the learned single Judge.

30. In the present case, plaintiffs seek for a declaration that the alleged guarantee created in the plaintiff's name for the loan advanced to the 1st defendant is null and void and seeks for permanent injunction restraining the defendants from proceeding against the plaintiff or the plaintiff's schedule property. The plaintiff has brought out the averments in the plaint to bring the suit within the purview of the exception carved out by the Supreme Court in Mardia Chemicals Ltd. v. Union

of India,(2004) 4 SCC 311. In determining whether such a plea has to be accepted, the plaint as a whole has to be read. In Popat and Kotecha Vs. State Bank of India Staff Association, ((2005) 7 SCC 510), the Supreme Court held that plaint averments cannot be compartmentalised or dissected, nor can the averments be read in isolation. As pointed out earlier, the limited exception, which is carved out by the Supreme Court, is whether the action of the secured creditor is so absurd and untenable that it would not require any probe, what so ever.

13. In the above judgments, the Hon'ble Supreme Court of India and this Court held that Section 34 of the SARFAESI Act clearly states that no Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine. Further held that the moment the Civil Suit is taken on file, the proceedings before the Debts Recovery Tribunal or under the SARFAESI Act gets slowed down. Therefore, the Courts have a grater responsibility to scan the pleadings and

see if the allegations of fraud and collusion made in the plaint are actually a product of fraud and collusion between the borrowers and those making such claims.

14. In the present case, the respondent is the borrower. Admittedly no proceedings under the SARFAESI Act is challenged in the present suit. As stated supra, the suit is only for injunction in respect of engaging the security personnel for the entire subject property and to restrain the defendant from parking their vehicles inside the suit property. Those reliefs are no way connected with the SARFAESI proceedings and no way impediment for the petitioner to proceed against the respondent under the SARFAESI Act. Therefore, the above judgments are not applicable to the case on hand.

15. Insofar as the petition in C.R.P.No.2011 of 2013 is concerned, there is no quarrel about that this Court has got jurisdiction and powers under Article 227 of the Constitution of India to entertain the petition to strike out the plaint. But there is an alternative remedy available under the

Civil Procedure Code and this Court cannot be exercise or supervisory jurisdiction under Article 227 of Constitution of India. In this regard, the learned counsel appearing for the respondent relied upon the judgment reported in (2019) 9 SCC 538 in the case of **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society**, as follows :-

"12. Secondly, the High Court ought to have seen that when a remedy of appeal under section 104 (1)(i) read with Order XLIII, Rule 1 (r) of the Code of Civil Procedure, 1908, was directly available, the respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors. 1, this Court held that "though no hurdle can be put against the exercise of the Constitutional powers of the High Court, it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a

Constitutional remedy”.

13. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the for a provided therein happen to be quasijudicial authorities and tribunals. In respect of cases falling 1 (2000) 7 SCC 695 under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in Surya Dev Rai vs. Ram Chander Rai², pointed out in Radhey Shyam Vs. Chhabi Nath³ that “orders of civil court stand on different footing from the orders of

*authorities or Tribunals or courts other than
judicial/civil courts."*

16. The Hon'ble Supreme Court of India categorically held that when there is an alternative remedy provided for under the CPC, the High Court should not entertain the revision under Article 227 of the Constitution of India. In the case on hand, the petitioner raised various grounds to strike off the plaint. When there is an alternative remedy under Order VII Rule 11 of C.P.C. for rejection of plaint, the petition under Article 227 of Constitution of India cannot be entertained. Therefore, the above judgment is squarely applicable to the case on hand.

17. Insofar as the other petitions in CRP.Nos.1980 & 1981 of 2013 are concerned, the orders under challenge are the interim orders passed at the time of entertaining the plaint and both the I.As are pending before the trial Court. The trial Court found prima facie case and granted interim injunction as prayed for. As stated above, the prayer sought for in the suit are nothing to do with the proceedings initiated by the petitioner under the SARFAESI Act against the respondent herein. That apart the impugned

orders are only interim orders and the petitioner can very well filed their counter and make submission for vacating the same. Without doing so, the petitioner challenged both the orders by way of present CRPs. It is made clear that the present suit filed by the respondent is no way impediment for the petitioner to proceed with the SARFAESI proceedings. Therefore, this Court finds no illegality or irregularity in the orders passed by the Court below.

18. In view of the above discussions, all the Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

11.02.2021

Internet : Yes

Index : Yes/No

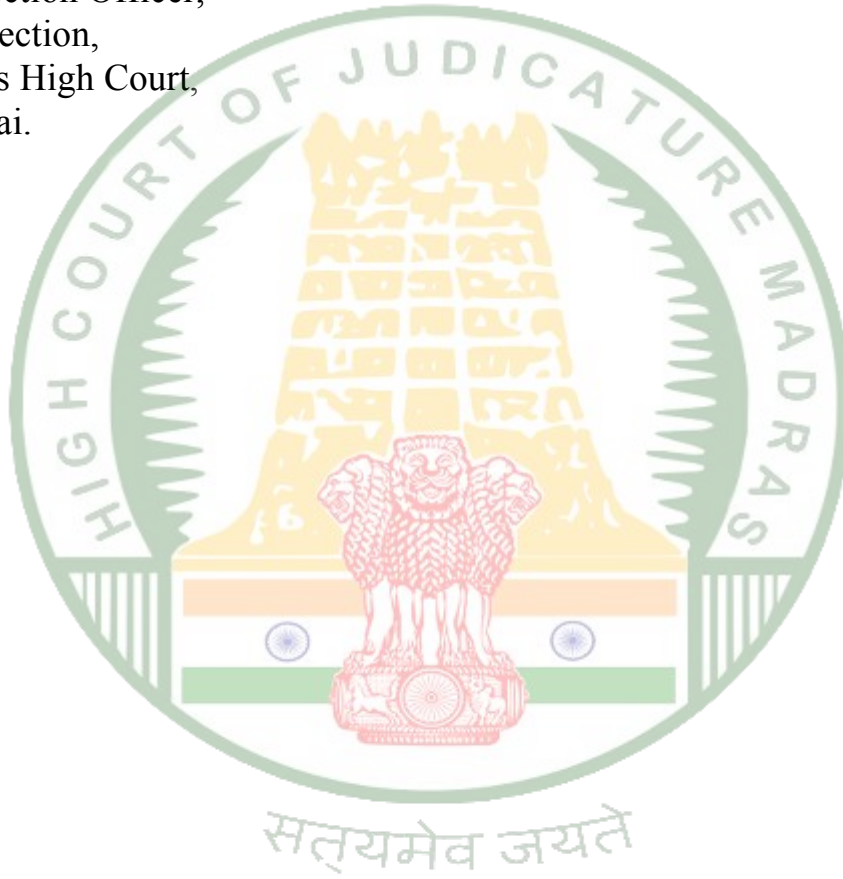
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To

1. The District Munsif,
Coimbatore.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

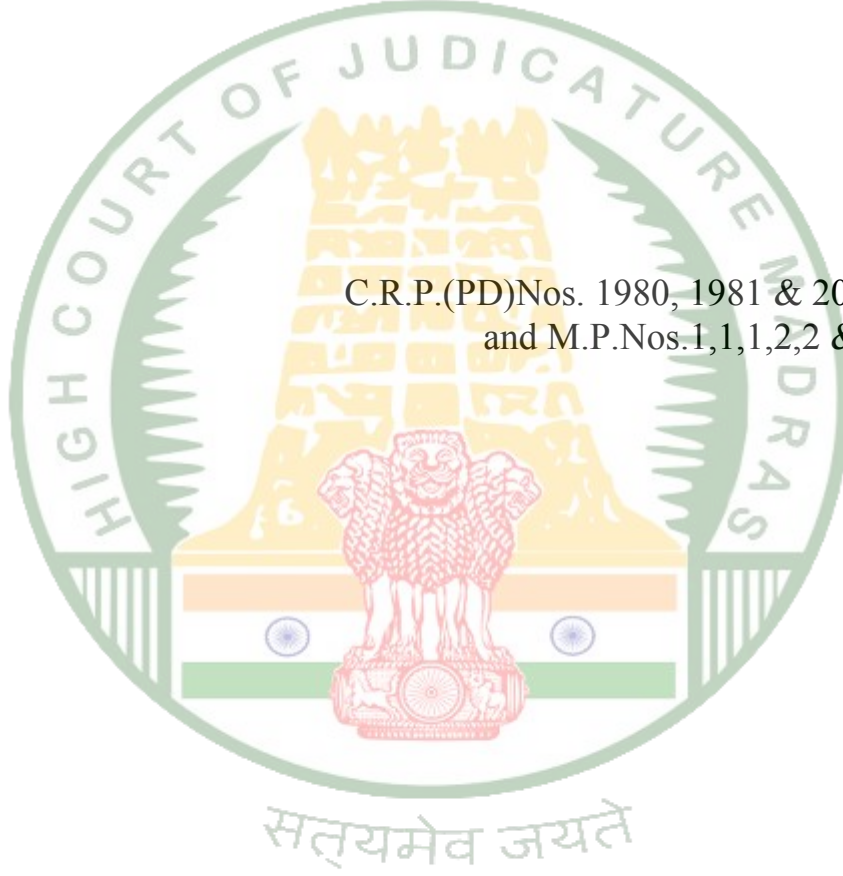


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C.R.P.(PD)Nos.1980, 1981 & 2011 of 2013

G.K.ILANTHIRAIYAN, J.

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and M.P.Nos.1,1,1,2,2 & 2 of 2013

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